

and time [sic] to re-design the system.”⁴⁰ No quantification of the costs is provided. Elsewhere, in fact, Endgate Corporation states that “[t]he preamps, power amps, IF amps and mixers are all typically broadband in nature and essentially already have the performance needed for a 24 GHz radio.”⁴¹

Clearly, the belated technical submissions in this docket do not support the 4:1 equivalency ratio. Indeed, these documents raise many more questions than they answer, both procedurally and technically. This information is precisely the type of material that should be subjected to the crucible of the public notice and comment process.

IV. MWCA HAS STANDING TO FILE A PETITION FOR RECONSIDERATION CHALLENGING THE *DEMS RELOCATION ORDER*

Not content with having the FCC unlawfully bypass public notice and comment prior to issuance of the *DEMS Relocation Order*, Teligent now goes to extraordinary lengths to preclude public participation after the fact. Teligent argues that the petitioners lack standing and, incredibly, that MWCA’s not having disclosed its membership somehow violates Teligent’s due process rights. No demonstration of standing, however, is required under Section 1.429 of the Commission’s rules.⁴² Teligent’s “due process” claim is, if possible, even more specious. The

⁴⁰ *Id.* at 4.

⁴¹ Memorandum from Doug Lockie to Russ Daggatt, filed in ET Docket No. 97-99 as attachment to “Document #2” (undated) at 1.

⁴² See Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations, 49 Rad. Reg. 2d (P & F) 702, 705 n.5. The SunCom case cited by Teligent is a ripeness case, not a standing case, and totally inapposite. *SunCom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386 (D.C. Cir. 1996).

citation to *U.S. v. Microsoft* and *Doe v. Frank*—civil liability adjudications—as precedent for “due process” rights to be afforded a licensee in a rulemaking of broad applicability offends even the commonest sensibilities.⁴³ No relevant precedent remotely supports limiting public participation in reconsideration of this order.

V. CONCLUSION

There is no precedent that supports the sweeping use of the national security exemption to the APA in the *DEMS Relocation Order*. As shown above, the relevant precedent defines a proper regulatory path for the Commission that requires notice and comment procedures prior to allocating the 24 GHz band for DEMS. Under the circumstances, the Commission must reconsider in part its decisions in the *DEMS Relocation Order* to allocate the 24 GHz band and

⁴³ *U.S. v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995); *Doe v. Frank*, 951 F.2d 320 (11th Cir. 1992). These cases hold that due process prohibits anonymous plaintiffs from maintaining civil lawsuits against defendants. These cases simply have no applicability in the context of public rulemaking proceedings.

transition existing 18 GHz licensees into that band, and initiate an new rulemaking proceeding, consistent with the APA, to consider the technical and policy issues implicated by the military's use of 18 GHz.

Respectfully submitted,

MILLIMETER WAVE CARRIER
ASSOCIATION, INC.

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Its Attorneys

Dated: July 23, 1997

CERTIFICATE OF SERVICE

I, Bonita Walker, hereby certify that on this 23rd day of July, 1997, I caused copies of the foregoing "Millimeter Wave Carrier Association, Inc. Reply to Oppositions" to be served, by First Class Mail, postage pre-paid, on the following:

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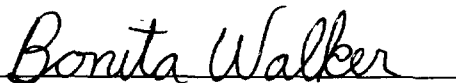
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REALLOCATION OF FREQUENCIES

FCC 58-379
57291



In the Matter of)
)
Amendment of Parts 2, 4, 7, 8, 9, 10,)
11, 12, 16 and 21 of the Commission's)
Rules and Regulations to reallocate)
certain frequency bands above 25 mc,)
now designated for exclusive Amateur)
or other non-Government use, to)
Government services on a shared or)
exclusive basis, and conversely to)
reallocate to non-Government use)
certain bands now designated for)
Government use.)

[§52:104] Reallocation of frequencies.

Certain frequency bands above 25 mc are re-allocated from amateur or other non-Government use to Government services on a shared or exclusive basis, and certain other bands reallocated from Government to non-Government use. The reallocations are required in the interests of national defense and particularly because of radiopositioning needs. Fixed stations operating in the 890-942 mc band will not be required to move, but no new fixed stations will be authorized in that band and existing stations will be required to accept interference from ISM stations as well as from radiopositioning stations, and may not cause harmful interference to radiopositioning.

MEMORANDUM OPINION AND ORDER

By the Commission: (Commissioners Hyde and Craven absent).

1. The Commission has before it for consideration the reallocation of the frequency bands indicated below:

(a) the reallocation of the exclusive amateur bands above 220 mc to Government services on an exclusive basis in one instance, and to Government services and the amateur service on a shared basis in the other instances;

(b) the reallocation of the frequency band 890-942 mc from non-Government to Government use and the frequency band 3500-3700 mc from non-Government to Government and amateur use;

(c) the reallocation of the frequency bands 1350-1400 mc, 3100-3300 mc, 5100-5250 mc, 8500-9000 mc, 9200-9300 mc and 9500-9800 mc from their present shared status between Government and non-Government use to exclusive Government use:



(d) the reallocation of the frequency bands 8400-8500 mc and 13225-13250 mc from Government to non-Government use;

(e) Government sharing of the frequency band 2450-2500 mc on a non-interference basis to non-Government use;

(f) the amendment of footnote US8 to §2.104(a)(5) of the Commission's Rules to permit no further use of the band 216-220 mc beyond January 1, 1963 by non-Government telemetering stations; and

(g) the deletion of footnote US10 to §2.104(a)(5) of the Commission's Rules which was designed to reserve for civil aviation a number of channels in the frequency bands 225-328.6 and 335.4-400.0 mc.

2. The Office of Defense Mobilization has made representations that the re-allocations set forth above are required either because of vital national defense considerations or are desirable changes incident thereto. The reallocation of frequency bands for Government use is stated to be essential to fill radiopositioning requirements, which have increased significantly in recent years due to the international political climate and the advent of the "space age." It is further stated that vital national defense considerations make it mandatory that provisions be made now in the allocation table for these requirements, some of which must be satisfied immediately and others which must be satisfied in the near future. 1/

3. Moreover, the Office of Defense Mobilization has represented that the requirements in question cannot be accommodated in frequency bands presently allocated for Government use. Based on the above representations, it appears that if these vital national defense needs are to be satisfied, sound frequency management requires that the designation in the Table of Allocations in Part 2 of the Commission's Rules must be changed at this time to make available for use by Government services the bands shown. Similarly, in the interest of making available to non-Government users as quickly as practicable those bands now designated as exclusive Government bands or bands which are now shared with non-Government stations, but which are henceforth to be designated as exclusive non-Government bands in partial compensation for the loss of other non-Government bands, the Table of Allocations in Part 2 should also be amended now. In its Notice of Proposed Rule Making issued today in Docket No. 12404 the Commission has proposed allocation of these bands to specific non-Government services.

4. In general, the Government operations which must be accommodated will utilize extremely high power. In many instances these operations will also be mobile. Therefore, there will be a very high probability that the Government operations in certain instances will cause harmful interference to other services operating in the same frequency bands. Moreover, because of the vital national defense considerations involved, non-Government services operating in certain of the bands in question would have to protect the Government operations from harmful interference.

1/ The nature and importance of these requirements is such that the allocations changes must be effected nationally despite the fact that a new international table of frequency allocations will not be adopted until the holding of the International Radio Conference scheduled to be held at Geneva, Switzerland, commencing in July, 1959.



5. Because of the high probability of harmful interference to the fixed service from the radiopositioning service in the band 890-942 mc, the ODM has recommended that all fixed stations be moved from this band. ^{2/} However, since the degree of interference to the fixed service can not be fully evaluated at this time, the Commission, by arrangement with the ODM, is not ordering the removal of the fixed stations now authorized in the band but recommends that those stations not able to accept harmful interference from radiopositioning or ISM voluntarily move to other appropriate bands. However, it is recognized that each additional fixed station authorized in the band 890-942 mc increases the probability of harmful interference to or from the radiopositioning service. Therefore, the Commission will authorize no new fixed stations in the band 890-942 mc, but will permit the continued operation of stations licensed therein at the present time, pursuant to the terms of outstanding authorizations. Renewals of these authorizations will, however, be granted only upon the condition that stations in the fixed service in the band 890-940 mc continue to accept interference from ISM, and that, in addition, fixed stations in the band 890-942 mc accept interference from radiopositioning, and not cause harmful interference to that service.

6. The Commission wishes to call attention to the fact that it has today taken two other actions which are related to the actions ordered herein. One such action is the issuance of a Notice of Inquiry in Docket 12263, requesting comments on proposed changes in Chapter III of the Atlantic City Radio Regulations, which includes the International Table of Frequency Allocations. The other action is the issuance of a Notice of Proposed Rule Making in Docket No. 12404, which proposes various changes in the Commission's Table of Frequency Allocations.

7. Based upon the representations that have been submitted to it concerning the requirements of national defense, the Commission finds that it would be in the public interest to amend its Rules to permit the orderly satisfaction of those requirements.

8. Because of the urgency and nature of the Government requirements and the vital national defense considerations involved herein, the Commission finds that it is impracticable and contrary to the public interest to comply with the Public Notice requirements of Section 4 of the Administrative Procedure Act, and that, for the same reasons, the amendments ordered herein should be made effective immediately.

9. In some instances, by the terms of this Order, frequency allocations are being made to services not previously provided for in Part 2 of the Commission's rules. Since Part 2 defines only those services for which specific frequency allocations have been made, it now becomes necessary to amend Part 2 to cover the newly-provided-for services and stations associated therewith. It should be noted that the new definitions are among those to be proposed by the U.S. at the ITU Radio Conference and are therefore subject to change. Accordingly, Appendix I hereto sets forth necessary additional

^{2/} In connection with the frequency band 890-940 mc, the Commission notes that most of the comments received in Docket 11866 from fixed service licensees operating in that band stress that their operations are not compatible with the operation of ISM equipment on 915 mc. The ODM has recognized that the radiopositioning service in the band 890-940 mc must accept any harmful interference caused by the operation of ISM equipment on 915 mc.



definitions as well as necessary changes to the table of frequency allocations in Part 2 of the rules.

10. In order to maintain consistency between the several Parts of the Commission's Rules, Amendments to those Parts affected by the changes being ordered in Part 2 are set forth in Appendices 2 through 9 hereto.

11. It is ordered, that under authority contained in Sections 1, 4(i), 4(j), 303(c), (f), (g) and (r) of the Communications Act of 1934, as amended, the Commission's Rules are amended, effective April 16, 1958, as set forth in the Appendices hereto; and

12. It is further ordered, that,

a. Persons presently authorized to operate on frequencies in the 216-220 mc band may continue to operate until the expiration of their present authorizations or until January 1, 1963, whichever is later and, if existing authorizations expire prior to January 1, 1963, applications for renewal may be granted for authority to operate until the latter date; and

b. Persons eligible under existing Rules may continue to apply for and receive authorizations to operate on available frequencies in the band 216-220 mc until replacement frequencies become available pursuant to studies now being conducted by the Commission. Such authorizations shall have an expiration date not later than January 1, 1963; and,

c. Effective immediately no new fixed stations, including tropospheric scatter stations in the international fixed service, will be authorized in the band 890-942 mc, provided that all stations presently authorized to operate on frequencies in the band 890-942 mc may continue to operate pursuant to the provisions of their existing authorizations until the termination of such authorizations; renewal of authorizations for such stations will be issued only on the condition (1) that they accept any harmful interference that may be experienced from either ISM equipment in the band 890-940 mc, or from the radiopositioning service in the band 890-942 mc and (2) that they do not cause harmful interference to the radiopositioning service;

d. Persons presently authorized to operate on frequencies in the band 3500-3700 mc may continue to operate until the expiration of their present authorizations and, if existing authorizations expire prior to February 1, 1961, applications for renewal may be granted for authority to operate until that date.

e. Effective immediately no new land radiopositioning or mobile radiopositioning stations will be authorized in the band 3100-3246 mc, 3266-3300 mc and 9200-9300 mc, provided that all such stations presently authorized to operate on frequencies in those bands may continue to operate pursuant to the provisions of their existing authorizations until the termination of such authorization; renewal of authorizations for such stations will be issued only on the condition that they cause no harmful interference to Government services in these bands.

f. Effective immediately no new radionavigation stations will be authorized to operate shipborne radars in the band 3100-3246 mc, provided that all such stations presently authorized to operate on frequencies in this band may continue to operate pursuant to the provisions of their existing



authorizations until the termination of such authorization; renewal of authorizations for such stations will be issued only on the condition that they accept any harmful interference that may be experienced from Government services in the band.

13. It is further ordered, that the following petitions, in so far as they pertain to requested changes in the allocation table between 890 and 942 mc are dismissed as moot:

a. Lenkurt Electric Co., Inc. petition filed June 5, 1953 requesting reallocation of the bands 890-910 mc and 925-940 mc to the fixed service; (Docket No. 10797)

b. Motorola, Inc. petition filed June 31, 1955 requesting the allocation of frequencies in the 890-960 mc band for the purpose of establishing a land mobile service; (Docket No. 10797)

c. Lenkurt Electric Co., Inc. petition filed February 10, 1956 for amendment of Part 18 to control radiation of Industrial, Scientific and Medical devices on 915 mc to prevent interference to authorized communication services in the band 890-940 mc; (Docket No. 10797)

d. U.S. Independent Telephone Association petition filed February 21, 1956 requesting reallocation of the band 890-940 mc to the common carrier fixed service (Docket No. 10797); and

e. Society of Plastics Industry, Inc. petition filed May 1, 1956 requesting cessation of common carrier fixed station licensing in the band 890-940 mc (Docket No. 10797).

Adopted: April 16, 1958

Released: April 18, 1958

FCC 58-394
57688

In the Matter of)
)
Amendment of Section 3.606,)
Table of Assignments,)
Television Broadcast Stations.)
(Erie, Pennsylvania; Akron-Cleveland, Ohio;)
Clarksburg and Weston, West Virginia;)
Flint-Saginaw-Bay City, Michigan))

Docket No. 12076

[§53:606] Allocation of television channels.

Channel 12 will not be deleted from Erie, Pennsylvania and shifted to another area. Deletion of Channel 12 would not result in effective de-intermixture in much of the authorized service areas of the Erie stations, and other relevant factors did not call for a shift of the channel.

[153:606] Allocation of television channels.

Channel 12 will not be deleted from Flint, Michigan and assigned to Saginaw-Bay City-Flint or to Ann Arbor. There is a greater need for a VHF channel in Flint than in Saginaw or Ann Arbor and reopening the Flint Channel 12 proceeding would entail further delay in that case. The only VHF channel assigned to Flint will not be deleted in order to add it to Detroit as an educational channel.

REPORT AND ORDER

By the Commission: (Chairman Doerfer not participating; Commissioner Hyde absent; Commissioner Lee concurring).

1. The Commission has before it for consideration its Notice of Proposed Rule Making issued in this proceeding on June 27, 1957 (FCC 57-699), proposing to shift Channel 12 from Erie, Pennsylvania to Cleveland, Ohio, or to Cleveland-Akron, Ohio and to shift Channel 12 from Flint, Michigan to Saginaw-Bay City-Flint, Michigan. This proceeding was initiated at the request of several petitioners who requested amendments of §3.606, Table of Assignments, Television Broadcast Stations, as follows: (1) Great Lakes Television Company, permittee of television Station WSEE on Channel 35 in Erie, on July 13, 1956 petitioned that Channel 12 be deleted from Erie and assigned to Cleveland; (2) Lake Huron Broadcasting Corporation, licensee of Station WKNX-TV on Channel 57 in Saginaw, Michigan, on August 30, 1956 requested that Channel 12 be shifted from Flint to the hyphenated area of Saginaw-Bay City-Flint; and (3) Summit Radio Corporation, permittee of Station WAKR-TV on Channel 49 in Akron, on May 27, 1957 requested that Channel 12 be deleted from Erie and assigned to the hyphenated communities of Cleveland-Akron. The WAKR-TV petition further requested that the Commission order the permittee of Station WBLK-TV, authorized to operate on Channel 12 at Clarksburg, West Virginia, to show cause why its transmitter should not be relocated at a site south of Clarksburg and that a final grant on Channel 12 in the presently pending Flint adjudicatory proceeding for the channel be conditioned upon selection of a site at least 170 miles from the Cleveland "antenna farm" at Parma, Ohio.

2. On February 19, 1958 the Detroit Educational Television Foundation, licensee of noncommercial educational station WTVS on Channel 56 at Detroit, Michigan, filed a petition for rule making to delete Channel 12 from Flint, Michigan and to reserve the channel for education in Detroit. Since this petition involves one of the channels under consideration in this proceeding and is in conflict with certain other proposals, it is being treated herein as a counter-proposal.

3. On June 7, 1957 Telecasting, Inc., permittee of Station WENS, authorized to operate on Channel 16 in Pittsburgh, Pennsylvania, petitioned to exchange Channels 9 and 16 between Steubenville, Ohio and Pittsburgh, or in the alternative, to add Channel 6 to Pittsburgh by making VHF channel changes in seven areas (Pittsburgh, Erie, Lancaster and Johnstown-Altoona, Pennsylvania; Cleveland-Akron, Ohio; Clarksburg, West Virginia; and Philadelphia-Wilmington-Camden-Atlantic City). On August 30, 1957 and on November 12, 1957, Telecasting filed comments and reply comments in the subject proceeding, re-urging as counterproposals the identical proposals which it advanced in its



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§ 957.91 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Order Directing That a Referendum Be Conducted Among Producers; Designating Agents To Conduct Such Referendum; and Determination of a Representative Period

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), it is hereby directed that a referendum be conducted among producers during the period April 28-May 5, 1958, inclusive, who, during the period July 1, 1957, through April 30, 1958 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the production area comprising certain designated counties in Idaho and Malheur County, Oregon, in the production of Irish potatoes for market, to determine whether such producers approve or favor the issuance of amendments to Order No. 57, as amended (7 CFR Part 957) regulating the handling of Irish potatoes grown in Malheur County, Oregon, and the counties of Adams, Valley, Lemhi, Clark, and Fremont in the State of Idaho, and all of the counties in Idaho lying south of the aforesaid counties in Idaho; and said amendatory order is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith.

The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except those Applicable to Milk and its Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F. R. 5176).

R. H. Eaton, Allan Henry, F. N. Andary and R. L. Powers of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated as agents of the Secretary to conduct said referendum jointly or severally.

Copies of the text of the aforesaid annexed amendatory order may be examined in the office of the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D. C., and at those places within the said production area announced by the referendum agents.

Ballots to be cast in the referendum and copies of the text of the said amendatory order may be obtained from any referendum agent and any appointee hereunder.

(48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047)

Dated: April 17, 1958

[SEAL]

DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 58-3006; Filed, Apr. 22, 1958; 8:49 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 2]

[Docket No. 12404; FCC 58-378]

FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

NOTICE OF PROPOSED RULE MAKING

1. Notice is hereby given of proposed rule making in the above entitled matter.

2. As part of its preparation for the International Radio Conference to be held at Geneva, Switzerland, in July 1959, the Commission has today issued a Fifth Notice of Inquiry in Docket 12263, inviting comments on proposed amendments to the international table of frequency allocations. In order to provide interested persons with the necessary allocations information the Commission is also making known at this time certain changes and proposed changes to the national table of frequency allocations. These include certain immediate changes in the national table which are required by virtue of national defense considerations and which have been made by a separate Order issued today by the Commission. In addition they include proposed changes in the national allocation table which are the subject of this docket proceeding.

3. In making these changes and proposed changes in allocations the Commission has had the benefit of the work which has been conducted by the Department of State Preparatory Committees for the 1959 Radio Conference; the comments and testimony presented in the Commission's proceeding concerning frequencies above 890 Mc (Docket 11866); the comments submitted in the Commission's proceeding involving frequencies between 25 and 890 Mc (Docket 11997); other rule making proceedings conducted by the Commission; and conferences with representatives of the Executive Branch concerning Government frequency requirements.

4. Set forth below are those changes in national allocations being proposed in this proceeding upon which comments are desired. However, in order that interested persons may become acquainted with the way in which these proposed national changes are related to international proposals and certain national changes being made this date, by order of the Commission, the attention of such persons is invited to the documents and proceedings mentioned in paragraph 2, above.

5. The Commission is still considering comments and/or testimony received in Dockets 11866 and 11997 in connection with such subjects as licensee eligibility, technical standards, various philosophies expressed in connection with private versus common carrier uses of the radio frequency spectrum and various sub-allocations to non-Government services. No specific proposals concerning these matters are being issued at this time and

such matters will continue to be studied by the Commission. However, as a result of the Commission's order adopted today amending its Table of Frequency Allocations, non-Government services will have suffered a loss of spectrum space above 890 Mc. Additional space will be lost by some of these services if the allocations proposals set forth herein are adopted. Therefore, it must be recognized that, to the extent such services may lose spectrum space, such possible loss will necessarily have a bearing on subsequent decisions of the Commission concerning sub-allocations and licensee eligibility.

6. The Commission wishes to direct special attention to its proposal in connection with the band 942-952 Mc. As evidenced in the proceeding in Docket No. 11866, there exists a particularly difficult allocation problem arising from the fact that common carriers have extensively activated domestic fixed systems in the band 890-940 Mc wherein the frequency 915 Mc has been allocated both nationally and internationally for ISM use with the condition that radiocommunications service in this band would have to accept any interference caused by the operation of ISM equipment. In the Commission's order adopted today the band 890-942 Mc was allocated, due to national defense considerations, to the Government. Although serious consideration was given by the Commission and by the ODM to the possibility of ISM interference to Government services, the ODM has recognized that the radiopositioning service in the band 890-940 Mc must accept any harmful interference caused by the operation of ISM equipment on 915 Mc. The operation of Government stations in the 890-942 Mc band will increase the likelihood of additional interference being caused to those existing fixed stations which may continue to be authorized in this band and the Commission's Order reallocating the band takes this fact into consideration and "freezes" the band as far as new assignments are concerned. In view of the immediate 915 Mc common carrier problem and as indicated below, it is proposed to:

(a) Allocate the band 942-952 Mc to:

(1) AM, FM and TV STL (Audio only);

(2) FM intercity relay on a non-interference basis to other services.

(3) International fixed public and international aeronautical fixed stations, in the territories only, where extended range fixed circuits are required.

(b) Permit access to the band 942-952 Mc by those fixed stations which now are authorized in the band 890-942 Mc on the following conditions:

(1) That such stations can show that harmful interference is being caused by Government radiopositioning stations in the 890-942 Mc band or by ISM operating on 915 Mc.

(2) That an engineering study by the Commission indicates that the proposed frequency assignment in the band 942-952 Mc is likely to eliminate the above interference.

(3) That the bandwidth of emission does not exceed 1100 kc.

(c) Allocate the band 2110-2200 Mc to:

- (1) Common Carrier fixed.
- (2) International control.
- (3) Operational fixed.

It is intended that the service rules pertaining to the aforementioned stations will limit the maximum authorized bandwidth to 5 Mc and will not permit video transmission.

7. Under the provision of footnote NG18, the Commission's Table of Frequency Allocations now permits the use of the bands 2900-3246 Mc, 3266-3300 Mc, 5250-5440 Mc, 5460-5650 Mc, 9000-9300 Mc and 9320-9500 Mc by radiopositioning stations on a non-interference basis. Under the Commission's proposal, footnote NG18 would be deleted. However, in lieu of the availability of frequencies in these bands under this footnote the Commission proposes that the allocation to radiopositioning would be changed to the bands 2900-3100 Mc (footnote US113), 5250-5460 Mc (footnote US116), 5460-5600 Mc (footnote US117), 5600-5650 Mc (footnote US118), 9000-9200 Mc (footnote US122) and 9300-9500 Mc (footnote US124). These bands would also become available, pursuant to footnote US113A, to educational institutions now governed by existing footnote NG39, which would be deleted.

8. If, as a result of the decisions reached in this proceeding, the Commission's Table of Frequency Allocations, as contained in Part 2, is changed, it follows that the frequency availability sections of other Parts of the Commission's rules will also require amendment. To the extent that this is necessary, it will be accomplished at a later date by further rule-making. It should be noted that the Commission may not take final action with respect to some of the proposals made in this proceeding until after the 1959 ITU Radio Conference. (For example, radionavigation bands.)

9. The proposed amendments to Part 2 of the Commission's rules are set forth in the attached Appendix and are issued pursuant to the authority of section 303 (c), (f) and (r) of the Communications Act of 1934, as amended.

10. Any interested person who is of the opinion that the proposed amendments set forth below should not be adopted may file with the Commission on or before July 16, 1958, written data, views or arguments setting forth his comments. Comments in support of the proposed amendments may also be filed on or before this date. Comments in reply to the original comments may be filed within 10 days from the last day for filing said original data, views or arguments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

11. In accordance with the provisions

regulations, an original and 14 copies of all statements, briefs or comments filed shall be furnished the Commission.

Adopted: April 16, 1958.

Released: April 18, 1958.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

The Commission is not, at this time, proposing national changes in its Table of Frequency Allocations below 25 Mc. The National changes in the bands above 25 Mc which are being proposed at this time are as follows:

Proposed U. S. allocation		Proposed FCC allocation	
Band (Mc)	Allocation	Band (Mc)	Class of station or services
3	4	5	6
108.0-118.0....	G/NG	108.0-118.0	Aeronautical radio-navigation.
118.0-121.975 (US94) (US95) (US96)	G/NG	118.0-121.975	Aeronautical mobile.
121.975-123.075 (US97) (US98) (US99)	NG	121.975-123.075	Aeronautical mobile.
123.075-126.80 (US94) (US100) (US101)	G/NG	123.075-126.80	Aeronautical mobile.
126.80-132.0....	NG	126.80-132.0	Aeronautical mobile.
942-952.....	NG	942-952 (NG101)	(a) AM STL. (b) FM STL. (c) Fld inter-city relay (shall cause no harmful interference to the other services and stations sharing this band). (d) International aeronautical fixed (Territories only). (e) International fixed public (Territories only). (f) Radio Astronomy.
1400-1427.....	G/NG	1400-1427	
1	2	3	4
1427-1435 (US107)	G/NG	1435-1535	Mobile (Aeronautical tele-metering only).
1535-1660 (US108)	G/NG	1535-1660	Aeronautical radionavigation.
1660-1670 (US109)	G	1670-1700	Meteorological aids (Radio-sonde).
1670-1700.....	G/NG		
2110-2200.....	NG	2110-2200	(a) Common Carrier fixed. (b) International control. (c) Operational fixed.
2450-2500.....	NG	2450-2500	(a) Fixed (NG102). (b) Mobile (NG102). (c) Radiopositioning.
2700-2900 (US111) (US112)	G		
2900-3100 (US113) (US113A).	G/NG	2900-3100	Maritime radio-navigation.
4200-4400.....	G/NG	4200-4400	Aeronautical

1	2	3	4
4900-5100.....	G/NG	4900-5100	Aeronautical radionavigation.
5250-5440 (US116) (US113A).	G/NG	5250-5440	Aeronautical radionavigation.
5460-5600 (US117) (US113A).	G/NG	5460-5600	Maritime radio-navigation.
5600-5650 (US118) (US113A).	G/NG	5600-5650	(a) Maritime radionavigation. (b) Meteorological Aids.
9000-9200 (US121) (US122) (US113A).	G/NG	9000-9200	Aeronautical radionavigation.
9300-9500 (US124) (US113A).	G/NG	9300-9500	(a) Aeronautical radionavigation. (b) Maritime radionavigation. (c) Meteorological aids.
10500-10550 (US125)	G/NG	10500-10550	Radiopositioning.
13250-13400....	G/NG	13250-13400	Aeronautical radionavigation (limited to airborne devices employing the doppler technique).
15250-15300....	G/NG	15250-15300	Aeronautical radionavigation.
15500-17300....	G		
17300-20000....	NG	17300-20000	(a) Fixed. (b) Mobile.
20000-22000....	G		
22000-23000 (US118).	NG	22000-23000	Amateur.
23000-24500....	G		
24500-25000....	G/NG	24500-25000	Radionavigation.
25000-27300....	G		
27300-31300....	NG	27300-31300	(a) Fixed. (b) Mobile.
31500-33000....	G		
33000-34500....	G/NG	33000-34500	Radionavigation.
35400-36000....	G		
36000-38000....	NG	36000-38000	(a) Fixed. (b) Mobile.
38000-40000....	G		
Above 40000....	G/NG	Above 40000.	(a) Amateur. (b) Experimental.

NG101 Non-Government fixed stations which were authorized on April 16, 1958, to use frequencies in the band 890-942 Mc may, upon the showing that interference is being caused by or to their assignments, be authorized to use frequencies in the band 942-952 Mc provided the bandwidth of emission does not exceed 1100 kc and provided that an engineering study by the Commission indicates that the proposed frequency assignment for such stations in the band 942-952 Mc is likely to result in the elimination of the interference occurring in the band 890-942 Mc.

NG102 The use of the band 2450-2500 Mc by non-Government stations in the fixed and mobile services is limited to the remote control of devices not intended for radio-communications. Stations in the fixed and mobile services, authorized prior to July 1, 1958, may continue to be authorized in this band.

US16 The frequency 22235 Mc/s is designated for industrial, scientific and medical purposes; emissions must be confined within the limits of 22119-22300 Mc/s. Radio-communication services operating within these limits must accept any harmful interference that may be experienced from the operation of industrial, scientific and medical equipment.

US94 The bands 118.0-121.4 Mc/s and 123.0-126.80 Mc/s are for air traffic control communications.

US95 The frequency 121.5 Mc/s is for search and rescue communications. Aeronautical utility land and mobile stations may use this frequency on the condition that no harmful interference is caused to search and

PROPOSED RULE MAKING

search and rescue operations in the locale involved.

US96 The band 121.65-121.975 Mc/s is for use by aeronautical utility land and mobile stations, and for air traffic control communications.

US97 The current use of the band 121.975-123.075 Mc/s by military aircraft is temporary and may continue until they are moved to an appropriate band.

US98 The band 121.975-123.075 Mc/s is available to CAA aircraft for communications pursuant to flight inspection functions in accordance with the Civil Aeronautics Act of 1938, as amended.

US99 The band 121.975-123.075 Mc/s is for use by private aircraft stations. The frequencies 122.8 and 123.0 Mc/s may also be used by aeronautical advisory stations.

US100 The band 123.075-123.55 Mc/s is for (a) non-Government operations in accordance with the Commission's Rules and (b) for CAA communications incident to flight test activities pertinent to aircraft certification.

US101 The band 123.075-123.55 Mc/s is for use by flight test and flying school stations.

US107 The band 1435-1535 Mc/s is allocated exclusively for aeronautical tele-metering.

US108 Radio altimeters are permitted in the band 1600-1660 Mc/s until such time as international standardization of other aeronautical radionavigation systems or devices requires the discontinuance of radio altimeters in this band.

US111 Temporarily, and until certain operations of the radiopositioning service in the band 2700-2900 Mc/s can be transferred to other appropriate frequency bands, the aeronautical radionavigation service may, in certain geographical areas, be subject to receiving some degree of interference from the radiopositioning service.

US112 Non-Government land based radars in the aeronautical radionavigation service may be authorized in the band 2700-2900 Mc/s, subject to the conclusion of appropriate arrangements between the Com-

mission and the Government agencies concerned, and upon special showing of need for service which the Government is not yet prepared to render.

US113 The non-Government radiopositioning service may be authorized in the band 2900-3100 Mc/s on the condition that no harmful interference is caused to Government services.

US113A Non-Government Experimental stations used by educational institutions for purposes of technical instruction in, and demonstration of, microwave techniques using pulsed emissions only may be authorized to use frequencies in the bands 2900-3100 Mc, 5250-5650 Mc, 9000-9200 Mc and 9300-9500 Mc on the condition that harmful interference is not caused to the other services authorized to operate in these bands.

US115 The band 4200-4400 Mc/s is reserved exclusively for radio altimeters until such time as international standardization of other aeronautical radionavigation systems or devices requires the discontinuance of radio altimeters in this band.

US116 The non-Government radiopositioning service may be authorized in the band 5250-5460 Mc/s on the condition that it does not cause harmful interference to the aeronautical radionavigation service or to the Government radiopositioning service.

US117 The non-Government radiopositioning service may be authorized in the band 5460-5600 Mc/s on the condition that it does not cause harmful interference to the maritime radionavigation service or to the Government radiopositioning service.

US118 In the band 5600-5650 Mc the non-Government radiopositioning service shall not cause harmful interference to the Government radiopositioning service.

US121 Temporarily and until certain operations of the radiopositioning service in the band 9000-9200 Mc/s can be transferred to other appropriate frequency bands, the aeronautical radionavigation service may, in certain geographical areas, be subject to receiving some degree of interference from the radiopositioning service.

US122 The non-Government radiopositioning service may be authorized in the band 9000-9200 Mc/s on the condition that harmful interference is not caused to the aeronautical radionavigation service or the Government radiopositioning service.

US124 The non-Government radiopositioning service may be authorized in the band 9300-9500 Mc/s on the condition that harmful interference is not caused to the aeronautical radionavigation, maritime radionavigation, meteorological aids services or to the Government radiopositioning service.

US128 The band 10500-10550 Mc/s is restricted to CW systems with a power not to exceed 40 watts into the antenna.

NOTES

1. The Commission proposes to delete footnote NG18 from the bands 2900-3246 Mc, 3266-3300 Mc, 5250-5440 Mc, 5460-5650 Mc, 9000-9300 Mc and 9320-9500 Mc. In lieu thereof, radiopositioning stations would be allocated the bands shown in proposed footnotes US113, US116, US117, US118, US122 and US124. The Commission also proposes the deletion of footnote NG39 for the band 2900-3246 Mc and in lieu thereof, to permit educational institutions access to the bands indicated in footnote US113A.

2. In lieu of footnote US17, which appears on certain Government bands, the Commission proposes to insert a paragraph in Part 2 of its Rules, preceding the Table of Frequency Allocations which reads as follows: "Non-Government contract development stations may be authorized to use frequencies in any band on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations".

3. Footnotes US5 and US6 would be deleted in view of other footnotes proposed for the band 108-132 Mc.

4. Footnote US20 would be amended by inclusion of the frequency 157.15 Mc for Government use.

[F. R. Doc. 58-3021; Filed, Apr. 22, 1958; 8:52 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The Dept. of the Air Force has filed an application, Serial No. Fairbanks 016422, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The applicant desires the land for a Communications Station.

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 1050, Fairbanks, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

GALENA AREA

Two parcels of land located approximately twenty miles south of Galena in the Fourth Judicial Division, Territory of Alaska, more precisely described as follows:

TRACT A

Beginning at a point which bears North, 400 feet from the intersection of latitude 64°25'40.383" N., longitude 156°49'59.445" W., 1927 North Am. Datum; thence by metes and bounds,

East, 450 feet;
South, 900 feet;
West, 800 feet;
North, 900 feet;
East, 350 feet to the point of beginning.

Containing 16.53 acres, more or less.

TRACT B

Beginning at a point which bears S. 4°09'

59.445" W., 1927 North Am. Datum; thence by metes and bounds,
S. 69°52' E., 6,217 feet;
S. 20°08' W., 2,000 feet;
N. 69°52' W., 6,217 feet;
N. 20°08' E., 2,000 feet to the point of beginning.

Containing 285.45 acres, more or less.

RICHARD L. QUINTOS,
Operations Supervisor.

[F. R. Doc. 58-2993; Filed, Apr. 22, 1958; 8:46 a. m.]

Bureau of Reclamation

WEBER BASIN PROJECT, UTAH

FIRST FORM RECLAMATION WITHDRAWAL

JUNE 12, 1957.

Pursuant to the authority delegated by Departmental Order No. 2765 of July 30, 1954, I hereby withdraw the following described lands from public entry, under the first form of withdrawal, as





In the Matter of)
)
Amendment of Parts 2, 4, 7, 8, 9, 10, 11, 12, 16)
and 21 of the Commission's Rules and Regulations)
to reallocate certain frequency bands above 25 mc)
now designated for exclusive Amateur or other)
non-Government use, to Government services on a)
shared or exclusive basis, and conversely to re-)
allocate to non-Government use certain bands now)
designated for Government use.)

[§25:4, §52:104] Compliance with Administrative
Procedure Act in rule making.

The Commission was justified in making changes in frequency allocations without notice of proposed rule making and in making the changes effective immediately, where the Commission made the changes on the basis of representations made by another government agency, which could not be made public for security reasons, and in order to satisfy an urgent need for spectrum space for radiopositioning devices. The fact that under the terms of the Commission's action, the Government would operate in the 890-942 mc band subject to ISM interference does not detract from the importance of the operation nor does the fact that services presently licensed in the band may continue to operate for the duration of their licenses lessen the urgency of the Government's requirements.

[§10:305, §52:104] Validity of radiopositioning
allocations.

Allocation of certain frequency bands for radiopositioning purposes cannot be held to violate the terms of the International Radio Regulations, under which the bands are allocated to aeronautical radionavigation and radionavigation respectively. The Commission does not allocate frequencies for use by Government radio stations.

[§52:104, §62:231] Reallocation of 220-225 mc band.

Reallocation of the 220-225 mc band so as to permit Government radiopositioning operations in this band may have an adverse effect on Radio Amateur Civil Emergency Service operations but overriding public interest considerations require the change.



[§52:104, §55:253] Reallocation of 420-450 mc band.

Reallocation of the 420-450 mc band to provide primarily for its use by Government radiopositioning stations cannot be held to have blocked development of an air collision avoidance system. No such system has been licensed and other frequencies could be used.

[§52:104] Reallocation of 890-942 mc band.

Reallocation of 890-942 mc for Government radiopositioning operations, retaining the provision for ISM devices on 915 mc and permitting non-Government fixed stations already licensed in the band to continue to operate for the duration of their license term, subject to renewal only on condition of accepting interference from and causing no interference to radiopositioning operations, was required in the interests of national defense and is not unduly harsh or unreasonable on common carriers operating in the band.

[§52:104] Reallocation of 8500-8900 mc band.

Use of 8750-8850 mc by doppler radar (aeronautical radionavigation) may not be allowed on a permanent basis. The provision under which doppler radars may continue to use the band subject to interference from Government radiopositioning operations is a proper one. The 13000 mc band is being made available for such radars.

MEMORANDUM OPINION AND ORDER

By the Commission:

1. The Commission has before it for consideration its Memorandum Opinion and Order of April 16, 1958 (FCC 58-379) [17 RR 1505], released April 18, 1958, and the following pleadings filed in connection therewith:

a. Petitions for reconsideration and/or stay of certain portions of the Order filed by Aeronautical Radio, Inc. (ARINC) and Air Transportation Association of America (ATA) (jointly), Bendix Aviation Corporation, the City of Burbank, Douglas Aircraft Company, Inc., Electrocom, Inc., National Aviation Trade Association (NATA), General Telephone Company of Florida, General Telephone Company of Illinois, General Telephone Company of Indiana, General Telephone Company of the Northwest, Florida Telephone Corp., Peoples Telephone Corp., Inter-County Telephone and Telegraph Company (Fort Myers, Florida), Kern Mutual Telephone Company, Lenkurt Electric Company, Inc., Lockheed Aircraft Corporation, Boeing Airplane Company, Lorain Telephone Company, Northern Ohio Telephone Company, North Pittsburgh Telephone Company, Radio Corporation of America, Southwestern States Telephone Company, United States Independent Telephone Association, West Coast Telephone Company and Budelman Electronics Corporation.

REALLOCATION OF FREQUENCIES



b. An opposition by Ryan Aeronautical Company to the petition for reconsideration filed by ARINC/ATA. 1/

c. General statements regarding the problem of spectrum allocation filed by the Central Committee on Radio Facilities of the American Petroleum Institute and the National Committee for Utilities Radio.

d. Petitions for amendments of regulations filed by ARINC/ATA, Collins Radio Company, and General Precision Laboratory (GPL).

e. A petition within the body of the Bendix petition supporting ARINC/ATA, which requests the Commission, pursuant to §5.253(f), to authorize an experimental grant of limited duration to operate a collision avoidance system on 430 mc as described in its application dated May 9, 1958.

f. Petition from Budelman Electronics Corp., requesting reallocation of 840-890 mc to common carrier fixed.

g. ARINC/ATA reply to Ryan opposition.

2. On April 16, 1958, the Commission adopted without notice a Memorandum Opinion and Order effecting certain immediate changes in its Rules, the results of which were to reduce the amount of spectrum space available to non-Government services in order to aid the Government services in satisfying their increased requirements. In some instances non-Government access to previously shared bands was deleted; in others, bands which had been allocated exclusively to non-Government use were given a shared status; and in one instance a band which had been exclusively non-Government was changed to exclusively Government. At the same time certain bands previously allocated to the Government or shared by the Government and non-Government services were designated for exclusive non-Government use.

3. These changes were brought about as a result of a request by the Office of Defense Mobilization (ODM) 2/ on behalf of the Executive Branch of the Government. The ODM request set forth what were asserted to be vital defense considerations requiring the use of additional radio frequencies in certain areas of the spectrum. Because of the sensitive nature of the subject matter involved, the showing submitted to the Commission by ODM bore a security classification and has not been made public, in keeping with the provisions of Section 4(j) of the Communications Act of 1934, as amended. As stated in the Opinion and Order, however, the additional spectrum space was essential to meet Government radiopositioning requirements.

1/ Filed late, the Ryan pleading was accompanied by a request for waiver of §1.13 of the Commission's Rules. The Commission finds that good cause has been shown for a late filing and grants the request. Petitions from Electrocom, GPL and Budelman also filed late are accepted on the Commission's own motion.

2/ Since July 1, 1958, the Office of Defense Mobilization is the Office of Defense and Civilian Mobilization (ODCM).



4. In considering the ODM representations the Commission also had before it matters of record filed in two Commission proceedings: Docket No. 11866 and Docket No. 11997. These were both general, fact-finding inquiries designed to obtain from non-Government users, data and information for use in connection with the future allocation of frequencies. Docket No. 11866 ^{3/} relates to the portion of the spectrum above 890 mc and Docket No. 11997 to the frequencies between 25 mc and 890 mc. ^{4/}

5. The Commission found on the basis of the national defense considerations submitted by ODM that it would be in the public interest to effect the desired amendments and that good cause was present for making the change effective immediately and without notice or opportunity for the filing of comments by interested parties. Accordingly, by the Memorandum Opinion and Order of April 16, 1958, the table of allocations and other appropriate parts of the Rules were amended to accommodate the Government's requirements. Since that time the petitions described in paragraph 1 supra have been filed, nearly all of them requesting reconsideration and/or stay of various portions of the April 16 Order and in some cases, hearing before the Commission en banc. They challenge the Commission's action on legal and technical grounds and seek varying forms of relief.

6. Legally, it is argued, the Order is defective because the Rule-making provisions of the Administrative Procedure Act were not followed, and because the allocations made do not conform to the Frequency Allocation Table set forth in the International Radio Regulations (Atlantic City, 1947). The Commission believes both contentions to be without merit. Section 4(a) and 4(c) of the Administrative Procedure Act require that general notice be given of proposed rule making and that substantive rules be published at least thirty days before their effective date; but also provide that the requirements may be dispensed with when good cause is found for so doing. The Memorandum Opinion and Order of April 16, 1958, contains the following justification for acting without a notice of rule making and for giving immediate effect to the Rule: "Because of the urgency and nature of the Governmental requirements and the vital national defense considerations involved herein, the Commission finds that it is impracticable and contrary to the public interest to comply with the Public Notice requirements of Section 4 of the Administrative Procedure Act, and that, for the same reasons, the amendments ordered herein should be made effective immediately."

7. Petitioners argue that the reasons set forth by the Commission are inadequate to waive the provisions of Section 4(a) and 4(c). Lenkurt asserts that this is particularly so in the band 890-942 mc, contending that the Government's needs can not be vital if (as the table of allocations provides) its operations are subject to interference from ISM devices; and cannot be urgent if (as the April 16 Order provides) all existing non-Government fixed stations may continue to operate in the band, free of radiopositioning interference, until the expiration of their currently outstanding licenses.

^{3/} In the Matter of Allocation of Frequencies in the bands above 890 mc. For Preliminary Notice of Hearing see 21 FR 8957. Written comments in the docket were filed between November 8, 1956 and February 4, 1957, and oral testimony before the Commission was offered between May 20, 1957 and October 1, 1957.

^{4/} In the Matter of Statutory Inquiry into the Allocation of Frequencies to the
[Footnote continued on following page].

REALLOCATION OF FREQUENCIES



8. Having reviewed the contentions of petitioners and the views of the ODM as to the impact on national defense if the requests in the petitions were to be granted, the Commission adheres to its finding that in the present circumstances good cause exists for the manner in which the subject rule making was carried out. The Administrative Procedure Act (APA) leaves it within the discretion of the agency to waive the provisions of Section 4(a) and 4(c) where good cause exists. The action taken by the Commission was designed to satisfy the needs of the Government for spectrum space to be used by radiopositioning devices in the performance of defense functions held vital to the security of the nation. The need was urgent, and the considerations supporting it involved highly classified data which could not be placed on the public record. To conduct a public rule making proceeding would, in this instance, serve no practical purpose and could only delay the occupancy by the Government of the frequency bands involved. Under the circumstances, more compelling reasons for waiving the procedural provisions of Section 4(a) and 4(c) would be difficult to imagine.

9. The considerations raised by Lenkurt as to the band 890-942 mc in an attempt to refute the Commission's finding of good cause are entirely without validity. The fact that the Government will operate in the band subject to ISM interference does not detract from the importance of this operation. Similarly, the fact that services presently licensed in the band may continue to operate for the duration of their license (February 1961, in most instances) does not lessen the urgency of the Government's requirements. The Commission's decision to allow already authorized fixed stations to continue to operate for the duration of their licenses, without modification thereof, resulted from a concession by the Government that its present capabilities for utilizing this spectrum space do not at this time foreclose the use of these frequencies by stations now licensed. While some interference may be created it is not anticipated that it will be so great a problem as to require immediate removal of all licensed stations from the band. Freezing authorizations at their present level insures that the interference problem will be kept at this minimum and enables the Government to plan and implement with certainty its utilization of these frequencies on an orderly basis. In short, the considerations which led the Commission to dispense with the requirements of Section 4(a) and 4(c) remain as compelling for the 890-942 mc band as for the other portions of the spectrum affected by the Order.

10. While the Commission feels that the "good cause" under which the rule making requirements of the APA may be waived is clearly present here, it should be pointed out that petitioners in a very real sense have not been deprived of an opportunity to be heard in this matter. As already pointed out, the Commission, in arriving at its decision to reallocate the affected frequencies, considered the written comments filed in its Docket 11997 proceeding and the comments and testimony in Docket No. 11866. Representatives of virtually every segment of the industry with an interest in the frequencies under consideration participated in these proceedings. Their requirements and proposals with respect to these portions of the radio spectrum were fully set forth. Among those heard in both proceedings were the petitioners who have filed the most comprehensive requests for reconsideration in the instant matter: Aeronautical Radio, Inc., Lenkurt,

4/ [Footnote continued from preceding page].

Various non-Governmental Services and the Radio Spectrum between 25 mc and 890 mc. For Order of Inquiry see 22 FR 2684. Written comments in this docket were filed between April 5, 1957 and November 25, 1957.



RCA and the United States Independent Telephone Association. Collins participated in Docket 11866, which considered allocations in the frequency range with which its present petition is concerned. Thus the action of April 16, 1958, was not based solely on the representations of ODM as contended by several petitioners but took into account the views which the industry had just previously placed before the Commission.

11. Collins Radio, ARINC/ATA and GPL contend that the Commission's Order violates the terms of the International Radio Regulations (Atlantic City, 1947) and is therefore illegal. They point out that the frequency bands 420-450 mc and 8500-9800 mc are allocated internationally to aeronautical radionavigation and radionavigation respectively, and that no provision is made there or elsewhere for "radiopositioning," the use to which the Government would put these frequencies. The aeronautical radionavigation use of the band 420-450 mc permitted in Region 2 (the Western Hemisphere) under the terms of the existing treaty is limited to the temporary use of altimeters (No. 211 of the Radio Regulations). The Commission's Order of April 16, 1958, did not in any way change the access of the aeronautical radionavigation service to this band. In that same Order the Commission did limit the access of its licensees to the band 8500-9000 mc however, and indicated that the primary allocation in both the 420-450 mc and 8500-9000 mc bands was to Government radio stations. It should be noted, however, that the Commission does not, under the provisions of Section 305 of the Communications Act, allocate frequencies or bands of frequencies for use by U.S. Government radio stations, although the Commission's Table of Frequency Allocations in Part 2 of the Rules does indicate as a matter of public information which bands are allocated for exclusive or shared Government use. The allocation of these bands to the radiopositioning service has been pursuant to Presidential authority under Section 305 and not by the Commission. 5/

12. Turning to the substantive considerations set forth in the requests for reconsideration, the following paragraphs indicate, very briefly, the matters raised by petitioners.

13. 220-225 mc. — The April 16 Order provides for sharing between the Government and the amateur service in the heretofore exclusively amateur bands between 220 mc and 10,500 mc, with the amateur service required to operate on a non-interference basis to the Government's radiopositioning services operating in those frequency bands. The Communications Engineer of the City of Burbank, California has objected to these changes as they affect the band 220-225 mc. It is contended that the local office of civil defense might find itself without channels of communication needed in emergency or disaster situations because of the requirement that its Radio Amateur Civil Emergency Service (RACES) network, operating on 220.3 mc, protect the radiopositioning service. The Communications Engineer asserts that other communities may be in similar circumstances and contends that those adversely affected should have been heard before the Order was adopted.

14. That the reallocation of the 220-225 mc band might have an adverse effect on RACES operations was known by ODM and was considered by the Commission prior to adoption of the Opinion and Order. It was concluded that overriding public interest considerations nevertheless required that amateurs operating in this band must do so on a non-interference basis to the Government's radiopositioning installations.

5/ See Article 48 of the Buenos Aires Convention of the International Telecommunication Union.



15. 420-450 mc. — This band was reallocated to provide primarily for its use by Government radiopositioning, with the Amateur Service allowed to remain in the band on a non-interference basis. The temporary provision for altimeters was retained. ARINC/ATA, Bendix, Electrocom, Douglas, NATA, Boeing, and Lockheed contend that these frequencies are particularly adaptable for use by proximity warning indicators as part of an airborne collision avoidance system and request that portions of the Order be vacated and that a hearing be held to explore fully the potential uses of the 420-450 mc band. In addition to these petitions, a separate ARINC/ATA petition has been filed requesting rule changes looking toward an amendment of the Table of Frequency Allocations which would allow the 420-450 mc band to be used by an airborne collision avoidance system. Further, within the body of the petition filed by Bendix in support of the ARINC/ATA petition, there is contained a separate request, filed in accordance with §5.253(d) of the Rules that, pursuant to §5.253(f), the Commission authorize an experimental grant of limited duration to operate a collision avoidance system on 430 mc as described in their application for experimental license dated May 9, 1958.

16. The ODCM has determined that the band 420-450 mc is the only one which can feasibly be made to serve the Government radiopositioning requirement that must be fulfilled in this portion of the spectrum. Therefore the national defense consideration being paramount, the Commission adheres to the position taken in the April 16 Order with respect to the band.

17. Although the Commission's decision to adhere to the position taken in its April 16 action is based solely on national defense considerations, it appears pertinent to make these observations with respect to the band 420-450 mc for the information of all concerned. Despite the claims that extensive developmental work has been carried out by private industry involving a collision avoidance system, it should be noted that no license has ever been issued looking toward the development of such a system in this band. Additionally, no such system could have been licensed in this band under the Rules as they existed prior to the April 16 Order, nor, in fact, would such use have been consistent with the international table.

18. While petitioners contend that the reallocation has "summarily blocked" promising recent developments in the perfection of an air collision avoidance system, it should be pointed out that notwithstanding this assertion there appears in fact to be no general unanimity on what constitutes the most suitable allocation for collision avoidance systems. Testimony in the Docket 11866 proceeding reflected the need for such an allocation in the bands above 890 mc. Among the various frequencies mentioned for possible use by proximity warning indicators and collision avoidance systems were 1000 mc, 3000 mc, 4500 mc, 8500-8900 mc and 13000-26000 mc. In opposing the instant petition of ARINC/ATA, the Ryan Aeronautical Company disputes the contention that the reallocation of the 420-450 mc band would prevent the development of an air collision avoidance system. Other industry sources suggest that such a system might well operate in the vicinity of 35000 mc 6/ or even in the infrared range. 7/

6/ See Boeing Airplane Company Document No. D6-2747, April 5, 1957, a copy of which is available at the Commission's offices.

7/ See Raytheon publication dated 15 April 1957 entitled "Technical Proposal for an Infrared Optical Proximity Warning Indicator," a copy of which is available at the Commission's offices.



19. 890-942 mc. — The April 16 Order deleted the 890-942 mc allocation to non-Government services in order to meet the Government radiopositioning requirement in this portion of the spectrum. The existing provision for ISM devices on 915 mc was retained. Non-Government fixed stations already licensed in the band were allowed to remain in the band without modification of the terms of their licenses, for the remainder of that current license period. In other words they were still required to accept such harmful interference as might be experienced from ISM on 915 mc but would be afforded protection from interference from the new service, radiopositioning, for the remainder of their current license period. Although no additional licenses are to be granted to non-Government fixed stations in the band, existing licenses may be renewed on the following conditions:

(1) Such stations must continue to accept such interference as may be experienced from ISM equipment on 915 mc;

(2) Such stations must accept such interference as may be experienced from the radiopositioning service, and

(3) Such stations must not cause harmful interference to the radiopositioning service.

20. Requests that the effect of these provisions be stayed have been received from the following: Lenkurt Electric Company; United States Independent Telephone Association (USITA); General Telephone Company of the Northwest; Florida Telephone Corp.; West Coast Telephone Company; Southwestern States Telephone Company; Peoples Telephone Corp.; North Pittsburgh Telephone Company; Northern Ohio Telephone Company; Lorain Telephone Company; Kern Mutual Telephone Company; Inter-County Telephone and Telegraph Company; General Telephone Company of Florida; General Telephone Company of Illinois; General Telephone Company of Indiana, Inc. and Budelman Electronic Corp. The Budelman petition, in addition to protesting the action taken with respect to 890-942 mc, requests specifically that the band 840-890 mc be reallocated for the exclusive use of common carrier fixed stations. Additional comments bearing on the band 890-942 mc were submitted by API and NCUR. Their comments do not request a reconsideration of the Commission's Order but direct attention to the point that the Order may have a limiting effect on the amount of spectrum space available for future expansion of private microwave systems. Each requests that this factor be given due consideration by the Commission in its deliberations in Docket No. 11866.

21. The above parties, other than NCUR and API, argue that the Commission's action works undue hardship on independent telephone companies with operations, actual or planned, in this band and has adverse national defense implications as well. Principally, they urge that the Commission stay the effective date of its Order and continue to license on these frequencies until replacement frequencies can be provided in the same region of the spectrum.

22. The Commission has determined that a grant of the relief requested would be contrary to the public interest. The Government's present obligation to protect those licensees now in the band was assumed only on the condition that no additional stations be authorized because its immediate requirements can be met if it knows now the precise locations of non-Governmental stations it must protect. The Commission has been advised that it is inconsistent with national defense to prolong the licensing of non-Government stations in the band either



15. 420-450 mc. — This band was reallocated to provide primarily for its use by Government radiopositioning, with the Amateur Service allowed to remain in the band on a non-interference basis. The temporary provision for altimeters was retained. ARINC/ATA, Bendix, Electrocom, Douglas, NATA, Boeing, and Lockheed contend that these frequencies are particularly adaptable for use by proximity warning indicators as part of an airborne collision avoidance system and request that portions of the Order be vacated and that a hearing be held to explore fully the potential uses of the 420-450 mc band. In addition to these petitions, a separate ARINC/ATA petition has been filed requesting rule changes looking toward an amendment of the Table of Frequency Allocations which would allow the 420-450 mc band to be used by an airborne collision avoidance system. Further, within the body of the petition filed by Bendix in support of the ARINC/ATA petition, there is contained a separate request, filed in accordance with §5.253(d) of the Rules that, pursuant to §5.253(f), the Commission authorize an experimental grant of limited duration to operate a collision avoidance system on 430 mc as described in their application for experimental license dated May 9, 1958.

16. The ODCM has determined that the band 420-450 mc is the only one which can feasibly be made to serve the Government radiopositioning requirement that must be fulfilled in this portion of the spectrum. Therefore the national defense consideration being paramount, the Commission adheres to the position taken in the April 16 Order with respect to the band.

17. Although the Commission's decision to adhere to the position taken in its April 16 action is based solely on national defense considerations, it appears pertinent to make these observations with respect to the band 420-450 mc for the information of all concerned. Despite the claims that extensive developmental work has been carried out by private industry involving a collision avoidance system, it should be noted that no license has ever been issued looking toward the development of such a system in this band. Additionally, no such system could have been licensed in this band under the Rules as they existed prior to the April 16 Order, nor, in fact, would such use have been consistent with the international table.

18. While petitioners contend that the reallocation has "summarily blocked" promising recent developments in the perfection of an air collision avoidance system, it should be pointed out that notwithstanding this assertion there appears in fact to be no general unanimity on what constitutes the most suitable allocation for collision avoidance systems. Testimony in the Docket 11866 proceeding reflected the need for such an allocation in the bands above 890 mc. Among the various frequencies mentioned for possible use by proximity warning indicators and collision avoidance systems were 1000 mc, 3000 mc, 4500 mc, 8500-8900 mc and 13000-26000 mc. In opposing the instant petition of ARINC/ATA, the Ryan Aeronautical Company disputes the contention that the reallocation of the 420-450 mc band would prevent the development of an air collision avoidance system. Other industry sources suggest that such a system might well operate in the vicinity of 35000 mc 6/ or even in the infrared range. 7/

6/ See Boeing Airplane Company Document No. D6-2747, April 5, 1957, a copy of which is available at the Commission's offices.

7/ See Raytheon publication dated 15 April 1957 entitled "Technical Proposal for an Infrared Optical Proximity Warning Indicator," a copy of which is available at the Commission's offices.